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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 323

HUGH SMITH, *Petitioner*

v.

STATE OF FLORIDA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Florida entered May 25, 1962.

OPINIONS BELOW

The opinion of the Supreme Court of Florida is reported at 123 So.2d 700, and is attached hereto as Appendix "A."

JURISDICTION

The Supreme Court of Florida denied the petitioner's petition for a writ of certiorari on May 7, 1962 and issued a decision to that effect, in lieu of mandate, on May 25, making its judgment final.

The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3).

QUESTIONS PRESENTED

The same Florida law making it a crime to act as a "business agent" for a labor organization without obtaining a license from the state which this Court in *Hill* v *Florida*, 326 U. S. 804 (1945), declared unconstitutional as in conflict with the National Labor Relations Act was subsequently construed by the Florida Supreme Court to be applicable only "to functions performed by business agents of labor unions which have no relation to collective bargaining". It was then applied to convict the petitioner Smith of so acting without such license.

The questions presented by this petition are:

1. Does such law, so construed and as applied in this case, continue to conflict with the National Labor Relations Act as depriving employees covered thereby of their right freely to select their bargaining representatives, or do the provisions of the Labor-Management Reporting and Disclosure Act of 1959, which disqualify persons convicted of certain felonies from serving as union representatives, make way for the states to impose further disqualification?

2. Is such law, as so construed and as applied in this case, so vague and indefinite as to its coverage and application as to deny petitioner rights of due process where the law does not define nor did the prosecution attempt to allege or show which of the functions of a union representative has no relation to collective bargaining?

3. Does such law, so construed and as applied in this case, operate to deprive petitioner, whose "business agent" functions customarily include soliciting membership in his

union, of rights of free speech and assembly protected by the First Amendment?

STATUTES INVOLVED

Chapter 447, Florida Statutes, Sections 447.01-447.15:

Sec. 4. No person shall be granted a license or a permit to act as a business agent in the State of Florida:

(a) Who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit;

(b) Who has been convicted of a felony;

(c) Who is not a person of good moral character; and,

(2) Every person desiring to act as a business agent in the State of Florida shall, before doing so, obtain a license or permit by filing an application under oath therefor with the secretary of state accompanied by a fee of one dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority so to do. The secretary of state shall hold such application on file for a period of thirty days, during which time any person may file objections to the issuing of such license or permit.

(3) After the expiration of the thirty-day period, regardless of whether or not any objections have been filed, the secretary of state shall submit the application, together with all information that he may have, including any objections that may have been filed to such application, to a board to be composed of the governor as chairman, the secretary of state, and the superintendent of education. If a majority of the board shall find that the applicant is qualified, pursuant to the terms of this chapter, then the board shall by resolution authorize the secretary of state to issue such license or permit, same shall be for the calendar year for which issued, unless sooner surrendered, suspended or revoked.

The term "business agent" as used in Section 4 is defined in Section 2 of Chapter 447 (Section 2 (2)) as follows:

(2) The term "business agent" as used herein shall mean any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any "labor organization" in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees.

The National Labor Relations Act, 61 Stat. 156, 29 U. S. C. 151 et seq:

Sec. 7. "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ."

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U. S. C. 401, et seq:

Sec. 504. (a) No person who is or has been a member of the Communist Party or who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of title II or III of this Act, or conspiracy to commit any such crimes, shall serve—

(1) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, or other employee (other than as an employee performing exclusively clerical or custodial duties) of any labor organization, or . . .

Sec. 603. (a) Except as explicitly provided to the contrary, nothing in this Act shall reduce or limit the respon-

sibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and, except as explicitly provided to the contrary, nothing in this Act shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State.

STATEMENT OF THE CASE

On February 8 and March 25, 1960, petitioner Smith, an individual residing in Miami, Florida, and then serving as the duly elected business agent of Painters Local 365, affiliated with Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, was informed against in the Criminal Court of Records, Dade County, Florida, for acting as business agent of that local without a license to do so as required by Section 447 of the Florida Statutes. (R. 3-4, 7-8) Previously his license to act as such business agent had been revoked by the Florida Licensing Board, presumably on the ground that he was not a person of "good moral character."[1] The informations contained no allegations as to which of petitioner's daily activities were deemed to be in violation of the Florida law. Motions to quash those informations were granted on the ground that the statute was unconstitutional as in conflict with the National Labor Relations Act. (R. 5, 9, 13-14). The case was duly appealed by the State to the Supreme Court of Florida. (R. 14-17) That court, in October of 1960, rendered a decision in which it reversed the quashing of the information and ordered the case remanded for trial. In its decision the Florida Supreme Court noted that following the remand by this Court of *Hill* v. *Florida*, 155 Fla. 245, 19

[1] The Licensing Law prohibits licenses to any person who has not been a United States citizen for more than ten years, who has been convicted of any felony or who is not a person of good moral character. Petitioner has been a citizen from birth and has never been convicted of any felony.

So 2d 857, after the reversal of that case in *Hill* v. *Florida*, 326 U. S. 804 (1945), that court had entered an order dissolving the previous injunction entered against the appellant Hill acting as a business agent "only to the extent that the same embraced possible activities of said appellant in collective bargaining" as contemplated by the National Labor Relations Act, in accordance with this Court's decision in the case, but in all other respects upheld its previous judgment. The Supreme Court of Florida went on to state that the Florida licensing law had thus been "so interpreted as not to apply to bargaining representatives of labor unions but applies only to functions performed by business agents of labor unions which have no relation to collective bargaining." On this construction of the statute, the Florida Supreme Court found no conflict with the federal law. In this connection, however, the Florida Supreme Court went on to hold that the passage of the Landrum-Griffin Act in 1959 indicated "a clear intention on the part of Congress not to preempt the field of labor relations in the area with which we are involved in this case, that is to say, the licensing and qualification of officers or paid representatives of labor unions. In other words the rationale of *Hill* v. *Florida*, no longer has application to Section 447.04, Florida Statutes." In support of the foregoing the court cited *DeVeau v. Braisted*, 363 U. S. 144 (1960). (R. 20-24; App. A).

The Florida Supreme Court rejected the other constitutional arguments advanced by petitioner, namely the contention that the Florida licensing law constituted a previous restraint upon freedom of speech and assemblage protected by the First Amendment, and the contention that such law as construed by the Court was so vague and indefinite as to deny petitioner rights of due process. (R. 20-24) This latter point was particularly stressed in a petition for reconsideration filed by petitioner with that

court on November 3, 1960 and denied without opinion on November 15, 1960. (R. 25-27).

Thereafter petitioner was tried before the Criminal Court of Record in and for Dade County, Florida. (R. 78) At the conclusion of the trial, petitioner was convicted of violating the Florida licensing law and was fined the sum of $200 and put on probation for a period of two years subject to imprisonment if within that period he functioned as a business agent. (R. 69-70, 72-73, 189).

At the time of his trial and before, by appropriate motions, petitioner attempted to be informed as to which of his activities as business agent of Painters Local 365 he was engaged in without a license and contrary to Chapter 447, but was not so informed. (R. 9, 80, 87-88, 118).

The undisputed evidence introduced at petitioner's trial shows that a business agent's customary functions, including Petitioner Smith's, consisted of the following:

A prime function of Smith and any business agent of the local is to obtain new members for the union and to obtain the authorization of employees to permit the union to represent them in collective bargaining. This is accomplished by the solicitation of membership or authorization cards in one of the following three ways: (1) by personal, oral solicitation and inducement of employees at their jobs, homes or social gatherings, (2) by the distribution of union pamphlets and literature, and (3) by the calling and addressing of meetings at which union representatives speak. (R. 92-93, 95, 108-109, 138-148).

Another major function is the negotiation and administration of collective bargaining agreements. This involves the actual negotiation of contracts on a yearly or bienniel basis. In the case of Smith and Local Union 365, this is done primarily with an association of painting contractors known as the Miami Chapter of the Painting and Decorat-

ing Contractors of America. After negotiations have been completed and the contract has been signed, it is the particular job of the business agent to administer and police the agreement, that is, to see to it that it is lived up to according to its terms for the protection of the membership. This involves visiting various job sites where work is in progress throughout the day. (R. 119-129, 138-148, 155-156).

A third major function of Smith and other business agents is the adjusting of grievances that arise on the job or under the collective agreement. This again involves going from job to job and attempting to settle the grievance on the spot. If it cannot be settled there, then it is the further function of the business agent to process a grievance up to and through arbitration as per the grievance and arbitration provisions of the agreement. (R. 143-146).

Another function is the procuring of qualified, skilled workmen to perform different types of painting work and seeking to maintain employment at as full a level as possible. On those rare occasions when it becomes necessary to take economic action, the business agent is usually a leader in the conduct of strikes and related picketing activities. (R. 92-93, 96, 100, 104-105, 114-116, 138-148).

With the exception of the striking and picketing activities, the above-described functions are engaged in daily by Smith and other union representatives, and sometimes even on weekends and holidays, and constitute the bulk, if not all, of his functions as business agent. (R. 138-148).

The union and its members and the contractors with whom they deal are subject to the N.L.R.A. (R. 119-129, 133-136).

There was no effort by the State to present evidence showing which of petitioner's activities the State considered unrelated to collective bargaining, and the trial court at the conclusion of the evidence did not determine which functions of petitioner were performed pursuant to

"collective bargaining" and which were not.[2] Instead the court simply found as follows:

> "The issue of, under the decision of the Florida Supreme Court, whether his actions were all pursuant to collective bargaining, *I'll find that some of them were but some of them weren't;* . . ." (Emphasis ours) (R. 184).

Following his conviction and sentence petitioner appealed first to the Circuit Court in and for the Eleventh Judicial Circuit in and for Dade County, Florida, (R. 70-71, 74-75), and then to the Supreme Court of Florida by Petition for Writ of Certiorari, raising the three constitutional questions presented in this case. (R. 70-71, 74-75, 28-36). The Supreme Court of Florida denied the petition without opinion on May 7, 1962 and issued a decision to that effect, in lieu of mandate, on May 25, making its judgment final. (R. 203, 203a, 204).

REASONS FOR GRANTING OF WRIT

I.

This case involves substantial federal questions of conflict between state and federal law and the impairment by state law of rights of free speech and assembly protected by the First Amendment and rights of due process protected by the Fourteenth Amendment. Here the Florida Supreme Court has undertaken to reject the rationale of this Court's decision in *Hill* v. *Florida*, 326 U. S. 804 (1945), as applied to the very Florida statute involved in that case, and in so doing to declare that it was the intent of Congress in enacting the 1959 Landrum-Griffin Amendments to the

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[2] Subsection 2 of Chapter 447 defines the term business agent as follows: "The term 'business agent' as used herein shall mean any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any "labor organization" in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees."

National Labor Relations Act to enlarge the allowable area of state interference with the right of employees covered by that Act freely to select their own bargaining representatives. This holding of the Florida Court is contrary to this Court's views, as expressed in *DeVeau* v. *Braisted*, 363 U. S. 144 (1960), of the effect of the 1959 Amendments in this area as well as of this Court's views of the continuing import of the doctrine of *Hill* v. *Florida, supra*. In addition the Florida Supreme Court has so construed the state law requiring the licensing of business agents under criminal sanctions in a manner making it impossible for any individual affected by such law to know under what circumstances and in respect to which of his activities or functions he must obtain a license without threat of jail sentence. Directly contrary to numerous decisions of this Court which hold that the due process clause of the Fourteenth Amendment requires that criminal statutes must be sufficiently definite and certain reasonably to inform the public as to which actions are proscribed, the Florida Court has so construed the licensing statute as to leave all affected thereby in complete darkness as to its coverage. Finally, the state court has upheld the requirement that a license be granted by the state as a prerequisite to the solicitation of membership in a labor organization and the exercise by union representatives of other rights of speech and assembly, again contrary to directly applicable decisions of this Court. Thus, unless this Court intervenes, the federally granted right of union members freely to select their bargaining representatives will be nullified, the right of labor union representatives to exercise rights of speech and assemblage without license from the state will be impaired, and the right of all persons subject to the sanctions of the Florida licensing statute to be clearly informed of its application to them will be denied. Where, as in this case, a state court has attempted to interpret federal statutes, a prior decision of this Court, and the federal Constitution in a

manner contrary to applicable determinations of this Court, substantial reasons for the granting of a writ of certiorari would seem to exist.

II.

It should be remembered that the Florida law licensing union representatives is more than a mere registration statute; rather it undertakes to grant or withdraw the right so to serve based on consideration of citizenship, conviction of any felony, and a licensing board's estimate of "good moral character." In *Hill* v. *Florida, supra*—a case involving the very licensing law now again before this Court—this Court held that unions have the right to select their representatives and these representatives have the right to function in collective bargaining free from conditions fixed by Florida, Congress having given these rights without qualification. The court below, however, has read provisions of the subsequently enacted Landrum-Griffin Act, particularly those provisions thereof which disqualify union representatives who have been convicted of certain felonies, as indicating a congressional intent not to preempt the field of labor relations in this area of qualification. Where Congress, as it did in Landrum-Griffin, has specifically prescribed under what conditions individuals may not serve as union bargaining representatives and has failed to make room for further restriction by the states, the usual rule is that all other restrictions are excluded. *Garner* v. *Teamsters, Local 776*, 346 U. S. 485 (1953). Indeed this issue was considered by this Court in *DeVeau* v. *Braisted*, 363 U. S. 144 (1960) and was decided contrary to the decision of the Supreme Court of Florida. *DeVeau* involved a New York statute prohibiting any person convicted of a felony from serving as a union representative in the longshore industry on the New York waterfront. In upholding the law this Court distinguished the *Hill* case as follows:

> "The sum of these considerations is that it would offend reason to attribute to Congress a purpose to

preempt the state regulation contained in Section 8. The decision in *Hill* v. *Florida*, 325 U. S. 538, in no wise obstructs this conclusion. An element most persuasive here, congressional approval of the heart of the state legislative program explicitly brought to its attention, was not present in that case. Nor was it true of *Hill* v. *Florida*, as it is here, that the challenged state legislation was part of a program, full canvassed by Congress through its own investigations, to vindicate a legitimate and compelling state interest, namely, the interest in combating local crime infesting a particular industry."

In the course of its opinion in *DeVeau* this Court made clear that Congress did not intend to give the states unlimited power to impose qualifications on union representatives when it enacted Section 504(a) of the Labor Management Reporting and Disclosure Act, 72 Stat 519, even though it did not enact a specific preemptive provision for Section 504 and even though under Section 604 it did provide that "nothing in this Act shall be construed to impair or diminish the authority of any state to enact and enforce general criminal laws with respect to [the same group of serious felonies, with the exception of exclusively federal violations, which are listed in Section 504(a)]". It is clear that Section 604 in no way involves nor refers to the subject of state-imposed qualifications or conditions on the ability of persons to serve as union representatives; it refers only to the enforcement of general state criminal laws establishing certain felonies. While it is true that Section 603(a) of the 1959 Law provides that "nothing in this Act shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop stewart, or other representative of a labor organization, or of any trust in which such a labor organization is interested . . . under the laws of any State . . . ", it must be remembered that Section 603(a) appears to have reference to the responsibilities of union representatives as fiduciaries as set forth under Section 501 of the new Federal Law (See dissent of Chief Justice Warren in the *DeVeau* case) and does not have reference to Section 504

or to the new law in general. Section 603(a) speaks of "responsibilities" and "trusts", and the right to pursue remedies for breaches thereof in the state as well as federal courts. It does not speak of the capabilities of persons to serve as union representatives.

Furthermore, it is greatly significant that Section 2 (2) of the 1959 federal labor law specifically states that it continues to be the responsibility of federal authorities and not state authorities to protect the right of employees to choose their own representatives to bargain collectively. Section 2 (2) reads:

> "The Congress finds that, in the public interest, it *continues to be the responsibility of the Federal Government* to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection . . ." (Emphasis supplied)

III.

The principal ground on which the Florida Supreme Court found that the pronouncements of this Court in *Hill* v. *Florida* are no longer applicable was that the Florida statute is now construed to apply "only to functions performed by a business agent which have no relationship to collective bargaining." But as indicated by the Record in this case (R. 138-148, 174-181), all of the ordinary functions of the business agent have a relationship to collective bargaining, and there is no indication in the statute or in the proof of its case by the State which of Petitioner Smith's functions have no such relationship and thus require the holding of a license. If anything, the Florida law, in its definition of business agent, on its face includes functions which have a necessary and direct relationship to collective bargaining, namely the issuance and solicitation of membership or authorization cards or soliciting or receiving from any employer any right or privilege for employees. Further, Section 7 of the federal act guar-

antees the right of free selection of representatives not only for collective bargaining purposes but also for the purposes of organization and assistance in engaging in the various concerted activities, economic or otherwise, for the purpose of achieving mutual aid or protection. *Thomas* v. *Collins*, 323 U. S. 516, 523 (1945).

The Senate gave the following explanation of the scope of the term "collective bargaining" in its Report on Violations of Free Speech and Rights of Labor (S. Rep. No. 1150, 77th Cong., 2d Sess., Part I, 4-5): "The right of self-organization and collective bargaining is a complex whole, embracing the various elements of meetings, speeches, peaceful picketing, the printing and distribution of pamphlets, news and argument, all of which, however, are traceable to the fundamental liberties of expression and assembly. So compounded, the right of self-organization and collective bargaining is fundamental, being one phase of the process of free association essential to the democratic way of life."

Without a more precise definition or description of those functions of union representatives which have no relationship to collective bargaining, the Florida law as presently construed by the supreme court of that state cannot avoid running afoul of the federal law and interfering with the free selection of collective bargaining representatives. To permit the Florida law as now construed to stand is to provide an easy method of avoiding the proscriptions against state trespass on federal rights.

IV.

The device of construing the Florida License Law to apply only to those functions of union representatives which have no relationship to collective bargaining as a means of avoiding constitutional difficulties must fail for yet another reason. Neither the Law itself nor the construction placed upon it by the Florida Supreme Court give any indication whatsoever which of a union representa-

tive's daily functions have no relationship to collective bargaining. On the contrary, as we have seen, the very definition of business agent contained in the Law indicates that the activities therein specified have a direct and necessary relationship to collective bargaining. The result is that no person who is possibly subject to the law's licensing requirements can know with any certainty when and under what conditions he is so subject. Thus he can exercise clear federal rights only under threat of criminal prosecution.

The Florida law is not simply a regulatory measure but is, in addition, a criminal statute with prescribed penal sanctions for any violation thereof. It has the effect of subjecting persons engaging in customary and usual practices—practices not constituting any crime under the common law—to fine and imprisonment if, after the law's enactment, they continue to engage in such practices. This Court has many times held that, while the state may thus create crimes, it is incumbent upon it to be sufficiently explicit so as to inform what conduct on an individual's part will render him liable to criminal penalties. A statute, and particularly a criminal statute, which is so vague, indefinite and uncertain as to its meaning that the things and matters prohibited and its application to particular persons are not reasonably and readily ascertainable is void under the due process clause of the Fourteenth Amendment. *Lanzetta* v. *New Jersey*, 306 U. S. 451 (1939); *United States* v. *Reese*, 92 U. S. 214 (1875); *United States* v. *Cohen Grocery Co.*, 255 U. S. 81 (1921); *Raley* v. *Ohio*, 360 U. S. 423 (1959); *Scull* v. *Virginia ex rel.*, 359 U. S. 344 (1959); *Winters* v. *New York*, 333 U. S. 507 (1948).

Furthermore, not only are rights to due process violated by any statute which is so ambiguous as to fail to inform individuals as to just which particular acts or functions constitute a crime, but also rights of free speech protected under the First Amendment are also violated when any of the proscribed acts or activities occur in the area of

solicitation and persuasion when it is not clearly indicated just what aspects of speech are proscribed. The First Amendment does not permit vagueness in this area any more than does the Fourteenth Amendment in respect to the proscription of criminal activities. *Thornhill* v. *Alabama*, 310 U. S. 88 (1940); *Thomas* v. *Collins*, 228 U. S. 516 (1945).

There is an additional reason for specificity. Smith's functions as a business agent involved the exercise of rights protected under the National Labor Relations Act as well as rights of speech protected under the First Amendment. Accordingly, it is doubly necessary that any state legislation touching upon these areas be sufficiently explicit to indicate that it does not trespass on those rights as well as to inform union representatives in the state precisely which of their multiple activities are proscribed under Chapter 447. The Florida Licensing Law, both as construed and applied in this case, requires persons at whom it is directed to speculate, not only concerning the coverage of a criminal statute, but also as to whether they can freely engage in rights and activities protected by the federal law and the federal Constitution. The Florida Supreme Court in upholding the law as against such argument has completely disregarded applicable decisions of this Court which do not tolerate ambiguity in these respects. It is respectfully submitted that this ground alone is sufficient to warrant the granting of this Writ.

V.

A final reason for invoking this Court's jurisdiction lies in the refusal of the court below to follow this Court's holdings in *Staub* v. *City of Baxley*, 355 U. S. 313 (1958), and its earlier holding in *Thomas* v. *Collins*, 323 U. S. 516 (1945). Those cases specifically hold that the right of union representatives to solicit membership into their union and to hold meetings to this end is one protected by the First

Amendment and not subject to licensing by the state. In the present case it must be remembered that Petitioner Smith was not convicted and sentenced because of anything he said or did, but simply because he did not have a license to act as a union representative. The very definition of business agent as set forth in the Florida law involves exercises of the right of speech, i.e., solicitation of membership in a labor organization. The record discloses that Smith's daily activities require the frequent exercise of rights protected under the doctrine of *Baxley* and *Thomas*. The Florida licensing law does not attempt to regulate the time, place and manner of solicitation or the use of public streets or other public facilities. It is not limited to the solicitation of funds or sums of money. It licenses mere solicitation to join a labor organization when membership or authorization cards are issued in connection therewith. Nor is it a mere registration statute under which licenses are issued as a matter of course, but rather, like the city ordinance involved in the *Baxley* case, involves formal licensing procedures under which the character of the applicant is one of the considerations passed upon by the Licensing Board. As stated by this Court in *Baxley*.

> "It is settled by a long line of recent decisions of this Court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.
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>
> "It is undeniable that the ordinance authorized the Mayor and Council of the City of Baxley to grant 'or refuse to grant' the required permit in their uncontrolled discretion. It thus makes enjoyment of speech contingent upon the will of the Mayor and Council of the City, although that fundamental right is made free from congressional abridgment by the First Amendment and is protected by the Fourteenth from inva-

sion by state action. For these reasons, the ordinance, on its face, imposes an unconstitutional prior restraint upon the enjoyment of First Amendment freedoms and lays 'a forbidden burden upon the exercise of liberty protected by the Constitution.' *Cantwell* v. *Connecticut*, supra (310 US at 307). Therefore, the judgment of conviction must fall."

CONCLUSION

The Supreme Court of Florida has disregarded applicable decisions of this Court in the field of preemption and respecting the protections against state interference with given rights of unions and their representatives under federal law and the federal Constitution. Further, the constitutional right of any person to be adequately informed of the nature of the crime of which he is accused has been denied. Thus grounds for the granting of this Writ exist in at least three separate respects. It is respectfully requested that this Petition be granted for the reasons stated above.

Respectfully submitted,

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APPENDIX "A"

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1960

THE STATE OF FLORIDA,
Appellant,

vs.

HUGH J. SMITH,
Appellee.

Case No. 30,538

Opinion filed October 19, 1960.

An Appeal from the Criminal Court of Record for Dade County, George E. Schulz, Judge.

Richard W. Ervin, Attorney General, B. Clarke Nichols, Assistant Attorney General and Richard E. Gerstein, State Attorney, for Appellant.

Cowart & Douglas and Herbert S. Thatcher (Washington, D. C.), for Appellee.

PER CURIAM.

On February 8, 1960, appellee was informed against in the Criminal Court of Record, Dade County, for acting as a business agent of a labor union between January 19, 1960, and February 5, 1960, without a license to do so, as required by Chapter 447, Florida Statutes. A motion to quash said information was granted March 17, 1960.

On March 25, 1960, appellee was again informed against in the Criminal Court of Record, Dade County, for the same offense committed at the same time as the first offense de-

tailed in the preceding paragraph. On May 12, 1960, motion to quash the latter information was granted on the ground that §447.04, Florida Statutes, was unconstitutional in that it is repugnant to the National Labor Relations Act. We are confronted with an appeal from the latter order.

The first question with which we are confronted is whether §447.04, Florida Statutes, infringes upon the National Labor Relations Act, and is, therefore, unconstitutional under the supremacy clause of the Federal Constitution.

In Hill v. State, 155 Fla. 245, 19 So. 2d 857, the constitutional validity of §447.04, Florida Statutes, was examined and we upheld its validity after deleting therefrom a provision which was held to vest arbitrary power in the board created thereby. The statute considered in Hill v. State, supra, is identical to the statute involved in the instant case, except that a few minor changes, such as changing "United States of America" to "United States" and "State of Florida" to "State," have been made and the section deleted by this Court in Hill v. State, supra, no longer appears in the act.

On appeal to the Supreme Court of the United States, the decision of this Court was reversed on the ground that the Florida Statute conflicted with the National Labor Relations Act, 325 U. S. 538, 89 L. Ed. 1782, 1784 (1945), 326 U. S. 804, 90 L. Ed. 489 (1945). In holding §447.04, Florida Statutes, unconstitutional, the Supreme Court said:

> "It is apparent that the Florida statute has been so construed and applied that the union and its selected representative are prohibited from functioning as collective bargaining agents, or in any other capacity, except upon conditions fixed by Florida. The declared purpose of the Wagner Act, as shown in its first section, is to encourage collective bargaining and to protect the 'full freedom' of workers in the selection of bargaining representatives of their own choice. * * * "Section 4 of the Florida act circumscribes the 'full freedom' of choice which Congress said employees

> should possess. It does this by requiring a 'business agent' to prove to the satisfaction of a Florida Board that he measures up to standards set by the State of Florida as one who, among other things, performs the exact function of a collective bargaining representative. To the extent that §4 limits a union's choice of such an 'agent' or bargaining representative, it substitutes Florida's judgment for the workers' judgment. * * *
>
> "Our holding is that the National Labor Relations Act and §§4 and 6 of the Florida Act as here applied cannot 'move freely within the orbit of their respective purposes without infringing upon one another.' * * *"

Examination of this decision discloses that the Supreme Court reversed this Court only to the extent that the Florida Statute would be applied as to restrict the freedom of workers in the selection of their collective bargaining representatives. To that extent only the United States Supreme Court held that the act in question conflicted with the National Labor Relations Act. It follows that if the Florida Act be so interpreted as to remove the conflict so condemned by the National Labor Relations Act, the Florida Statute (§447.04, F.S.) would be constitutional as modified by the United States Supreme Court in Hill v. State, supra.

Following the remand of Hill v. State by the Supreme Court of the United States to this Court, we entered an order of reversal on November 29, 1945, wherein we said:

> "* * * (b) that in so far as said judgment sustained the injunction entered in the trial court as applied to the appellant Leo H. Hill with respect to any activity he might engage in as the collective bargaining representative of the appellant labor union as authorized under and contemplated by the National Labor Relations Act, such judgment of this Court is reversed, and said injunction issued against such appellant by the trial court should be dissolved only to the extent that the same embraced possible activities of said appellant in collective bargaining for the appellant union's members as provided in and contemplated by

said federal act; and (c) that in all other respects such judgment of this Court of November 28, 1944, shall stand as the amended and modified judgment of this Court in this cause. * * *"

It follows that §447.04, Florida Statutes, has been so interpreted as not to apply to bargaining representatives of labor unions but applies only to functions performed by business agents of labor unions which have no relation to collective bargaining. It is, therefore, our view that §447.04, Florida Statutes, as interpreted by this Court is not subject to the attack made on it in Hill v. State.

It further appears that since the foregoing decisions interpreting §447.04, Florida Statutes, the National Labor Relations Act has been modified in certain respects by the Labor Management Reporting and Disclosure Act so as to indicate a clear intention on the part of Congress not to preempt the field of labor relations in the area with which we are involved in this case, that is to say, the licensing and qualification of officers or paid representatives of labor unions. In other words, the rationale of Hill v. State no longer has application to §447.04, Florida Statutes. See purpose of the Labor-Management Reporting and Disclosure Act, 73 Statutes 519, 20 U.S.C.A., §§401 and 504; DeVeau v. Braisted, 28 U.S.L.Week 4390 (U. S. June 6, 1960).

The second question presented is whether the provisions of §447.04, Florida Statutes, constitutes an undue restraint upon freedom of speech or freedom of assemblage.

This Court answered that question in the negative in Hill v. State, supra, and the Supreme Court of the United States did not disturb that holding when the case reached them. These decisions would appear to conclude the question. See also Thomas v. Collins, 323 U. S. 516, 89 L. Ed. 430 (1944).

Question three has to do with whether or not granting the motion to quash the information without permission of the state to file an amended information barred it from doing so thereafter.

This question is without merit and is concluded by Hayden v. State, 150 Fla. 789, 9 So. 2d 180 (1942).

The concluding question is whether or not the information charges an offense under the laws of the State of Florida. We hold such allegations are sufficient. Collier v. State, 116 Fla. 703, 156 So. 703 (1934); Overstreet v. Whiddon, 130 Fla. 231, 177 So. 701 (1937); Jarrell v. State, 135 Fla. 736, 185 So. 873 (1939).

It follows that the judgment appealed from must be, and is hereby, reversed.

Reversed.

THOMAS, C. J., TERRELL, HOBSON, ROBERTS, DREW, THORNAL and O'CONNELL, JJ., concur.